

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

DWAYNE JONES,

Petitioner,

Case No. 2:08-CV-54

v.

HON. ROBERT HOLMES BELL

GERALD HOFBAUER,

Respondent.

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**ORDER ADOPTING REPORT AND RECOMMENDATION AND  
DISMISSING PETITION FOR WRIT OF HABEAS CORPUS**

On December 9, 2008, Magistrate Judge Timothy P. Greeley issued a Report and Recommendation (“R&R”) recommending that Respondent’s motion for summary judgment be granted and that Petitioner’s § 2254 petition for writ of habeas corpus be dismissed because it is barred by the applicable statute of limitations. (Dkt. No. 25). The R&R was duly served on the parties. Petitioner filed objections to the R&R on December 23, 2008. (Dkt. No. 26.)

This Court is required to make a *de novo* review upon the record of those portions of the R&R to which specific objections have been made. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). Although the Magistrate Judge’s R&R is reviewed *de novo*, this Court must review the state court proceedings consistent with the standards set forth in 28 U.S.C. § 2254.

Petitioner does not deny that his habeas petition was not filed within the applicable limitations period. Petitioner's objections to the R&R are based upon his contention that the doctrine of equitable tolling should be applied to his case. Petitioner cites *Dunlap v. United States*, 250 F.3d 1001 (6th Cir. 2001), in support of his contention that he is entitled to equitable tolling based upon his lack of notice of the filing requirement, his lack of constructive knowledge of the filing requirement, and his reasonableness in remaining ignorant of the legal requirement for filing his claim. Petitioner also requests a certificate of appealability.

The Court finds no merit to Petitioner's objections to the R&R. Petitioner's assertion that he is entitled to equitable tolling is wholly unsupported. Petitioner did not file a response to Defendant's motion for summary judgment. He did not file his brief in support of his petition for writ of habeas corpus until December 23, 2008, (Dkt. No. 27), after the R&R had already been issued. Petitioner has presented no facts in his brief or in his objections to support his assertion that he is entitled to equitable tolling. Petitioner has also presented no support for his contention that he is entitled to a certificate of appealability. Petitioner has not made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Accordingly,

**IT IS HEREBY ORDERED** that Petitioner Dwayne Jones's objections to the R&R (Dkt. No. 26) are **DENIED**.

**IT IS FURTHER ORDERED** that the December 9, 2008, R&R (Dkt. No. 25) is **APPROVED** and **ADOPTED** as the opinion of the Court.

**IT IS FURTHER ORDERED** that Defendant Gerald Hofbauer's motion for summary judgment (Dkt. No. 7) is **GRANTED**.

**IT IS FURTHER ORDERED** that Petitioner's petition for writ of habeas corpus (Dkt. No. 1) is **DISMISSED WITH PREJUDICE**.

**IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *Slack v. McDaniel*, 529 U.S. 473 (2000).

Dated: June 29, 2009

/s/ Robert Holmes Bell  
ROBERT HOLMES BELL  
UNITED STATES DISTRICT JUDGE